

PATENT COOPERATION TREATY

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WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

To:

see form PCT/ISA/220

Date of mailing

(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION

See paragraph 2 below

International application No.
PCT/GB2004/000028

International filing date (day/month/year)
07.01.2004

Priority date (day/month/year)
10.01.2003

International Patent Classification (IPC) or both national classification and IPC
A21C15/02

Applicant
MARS, INCORPORATED

| | | |
|------------|---|--------------------|
| PROGRESSOR | ✓ | TERM: |
| VISTEM | | |
| TECHNICAL | ✓ | DATE: <i>11/04</i> |
| EPG | | INITIALS |
| FOREIGNS | | CHECKED |
| REGISTERS | | |
| A.F.S. | | |
| POST GRANT | | |

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☒ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITYJC20 Rec'd PCT/PTO 30 JUN 2005
International Application No.
PCT/GB2004/000028

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material:
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing:
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/GB2004/000028

Box No. II Priority

1. ☒ The following document has not been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | |
|-------------------------------|-------------|--|
| Novelty (N) | Yes: Claims | 1,2,3,4,5,6,7,8,9,13,14,15,16,17,20,21,22,24,25,26 |
| | No: Claims | 10,11,12,18,19,23 |
| Inventive step (IS) | Yes: Claims | |
| | No: Claims | 1,2,3,4,5,6,7,8,9,13,14,15,16,17,20,21,22,24,25,26 |
| Industrial applicability (IA) | Yes: Claims | 1-26 |
| | No: Claims | |

2. Citations and explanations

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rules 43*bis*.1 and 70.10)

and / or

2. Non-written disclosures (Rules 43*bis*.1 and 70.9)

see form 210

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/GB2004/000028

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

PCT).

Novelty

2. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 10, 12, 18, 19, 23 is not new in the sense of Article 33(2) PCT. The document GB-2128130 is regarded as being the closest prior art to the subject-matter of said claims, and discloses (the references in parentheses applying to this document):

a confectionary product comprising a rippled wafer formed of a convoluted wafer ribbon (5), wherein the turns are substantially uniformly distributed across the cross section of the rippled wafer, where a turn is a change in direction of the wafer ribbon of at least 45°.

The subject-matter of claim 10 is therefore not new in the sense of Article 33(2) PCT.

2.1 Nor does the subject-matter of dependent claims 12, 18, 19, 23 appear to be new in the sense of Article 33(2) PCT, having regard to the disclosure of document GB-2128130.

Inventive step

3. It appears that the difference between the subject-matter of claim 1 and the prior art is merely an arbitrary choice of the number of turns/cm² cross sectional area, and therefore does not appear to involve an inventive step as no indication is given of the problem which is to be solved.

3.1 Also, dependent claims 2-8, 13-17, 20-22 and 24 appear to lack an inventive step for similar reasons as given in paragraph 3 above.

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/GB04/00028

Re Item VI

Certain documents cited

Certain published documents

| Application No | Publication date | Filing date | Priority date (<i>valid claim</i>) |
|-----------------|---------------------------|---------------------------|--------------------------------------|
| Patent No | (<i>day/month/year</i>) | (<i>day/month/year</i>) | (<i>day/month/year</i>) |
| WO 03/005832 A1 | 23.01.2003 | 10.07.2002 | 13.07.2001 |

Re Item VII

Certain defects in the international application

1. The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).
2. Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the document GB-2128130 is not mentioned in the description, nor is this document identified therein.

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Clarity

1. The application does not meet the requirements of Article 6 PCT, because the claims are not clear.

1.1 The terms "rippled wafer", "turns/cm²" and "as defined in the specification" used in the claims are vague and unclear and leave the reader in doubt as to their meaning, thereby rendering the definition of the subject-matter of said claims unclear (Article 6 PCT).

For these terms the relevant definitions from the description should have been included in the claims.

1.2 Claim 11 does not meet the requirements of Article 6 PCT in that the matter for which protection is sought is not clearly defined. The following functional statement does not enable the skilled person to determine which technical features are necessary to perform the stated function: "in a single step".

1.3 Although claims 1, 9, 10, 11, 24 have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought. The aforementioned claims therefore lack conciseness. Moreover, lack of clarity of the claims as a whole arises, since the plurality of independent claims makes it difficult, if not impossible, to determine the matter for which protection is sought, and places an undue burden on others seeking to establish the extent of the protection. Hence, claims 1, 9, 10, 11, 24 do not meet the requirements of Article 6 PCT.

1.4 The terms "substantially as described with reference to the accompanying drawings" and "substantially as described with reference to Fig. 11 of the accompanying drawings" used in claims 25 and 26 are vague and unclear and leave the reader in doubt as to the meaning of the technical features to which they refer, thereby rendering the definition of the subject-matter of said claims unclear (Article 6